

**TOWN OF BUENA VISTA, COLORADO  
ORDINANCE NO. 19  
(SERIES OF 2010)**

**AN ORDINANCE APPROVING THE FIRST AMENDED ANNEXATION  
AND DEVELOPMENT AGREEMENT FOR COTTONWOOD MEADOWS**

**WHEREAS**, the Town has annexed the Cottonwood Meadows property effective as of April 6, 2010;

**WHEREAS**, Developer is currently seeking to amend its previously approved PUD Plan, PUD Phasing Plan, Sketch Plan and the Annexation and Development Agreement;

**WHEREAS**, the Town and Developer desire to enter into the First Amended Annexation and Development Agreement setting forth amended terms and conditions of the annexation of the Property to the Town and the zoning and development of the Property; and

**WHEREAS**, the First Amended Annexation and Development Agreement shall supersede the Annexation and Development Agreement dated November 10, 2009, which was adopted by Ordinance 8 (Series 2009).


**NOW, THEREFORE, BE IT ORDAINED BY THE TRUSTEES FOR THE TOWN OF BUENA VISTA, COLORADO, THAT:**

**Section 1:** The Board of Trustees hereby approves the First Amended Annexation and Development Agreement attached hereto as **Exhibit B**, which shall supersede the Annexation and Development Agreement dated November 10, 2009, which was adopted by Ordinance 8 (Series 2009).

**INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED** this 22nd day of June, 2010.

**THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY DAYS FROM PUBLICATION.**

TOWN OF BUENA VISTA, COLORADO

By:   
Mayor, Joel Benson

ATTEST:

  
Town Clerk, Diane Spomer



6/22/2010

**THE VILLAGES AT COTTONWOOD MEADOWS  
FIRST AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into this 22nd day of June, 2010 by and between the TOWN OF BUENA VISTA, COLORADO, a Colorado statutory town (hereinafter "Town"), THE MEADOWS AT BUENA VISTA, INC. ("The Meadows" or "Developer"), a Colorado corporation, LONESOME PINE HOLDINGS, LLC ("Lonesome"), a Colorado limited liability company, Jeffrey C. Allen and Theresa M. Allen (collectively "the Petitioner").

**W I T N E S S E T H :**

**WHEREAS**, Lonesome owns certain unincorporated tracts of land located in the County of Chaffee, State of Colorado, known as the Villages at Cottonwood Meadows Annexation described on Exhibits A-1, A-2, and A-3 attached hereto and incorporated herein by this reference ("Cottonwood Meadows" or the "Property"), and The Meadows has an option to purchase the Property; and

**WHEREAS**, Developer filed an Annexation Petition with the Buena Vista Town Clerk requesting that the Buena Vista Board of Trustees commence proceedings to annex the Property to the Town by serial annexation; and

**WHEREAS**, simultaneously with the Annexation Petition for the Property, Developer filed with the Buena Vista Planning Department an application for PUD Development Plan and Sketch Plan approval for a planned unit development and a major subdivision of the Property; and

**WHEREAS**, following duly Noticed public hearings, the Town adopted Ordinance No. 8 (Series of 2009), being the first annexation of three annexations in a Serial Annexation, which Ordinance also approved an Annexation and Development Agreement; and

**WHEREAS**, the Town completed said Serial Annexation by the adoption of Ordinance Nos. 9 and 10 (Series of 2009) and the adoption of Ordinance No. 11 (Series of 2009) which approved the Regulatory Code for the Property; and

**WHEREAS**, the Town made the findings required for annexation in Resolution No. 98 (Series of 2009), approved the Sketch Plan by Resolution No. 99 (Series of 2009) and conditionally approved a Service Plan by Resolution No. 100 (Series 2009); and

**WHEREAS**, pursuant to C.R.S. §31-11-101, *et seq.*, certain petitioners timely filed a referendum petition relating to Ordinance No. 8 (Series of 2009) on December 16, 2009 which was determined to be sufficient subject to a pending protest proceeding; and

**WHEREAS**, by election held on April 6, 2010, the Town approved Ordinance No. 8 (Series 2009); and

**WHEREAS**, the protest proceeding has been dismissed and the effective date of the Town's approval of Ordinance Nos. 8, 9, 10 and 11 (Series of 2009) is April 6, 2010; and

**WHEREAS**, Developer has filed with the Buena Vista Planning Department and the Town a 2010 Amended Application seeking approval of a revised PUD Plan, PUD Phasing Plan and Sketch Plan and this Annexation and Development Agreement; and

**WHEREAS**, the Town and Developer desire to enter into this Annexation and Development Agreement to set forth their agreements concerning the terms and conditions of the annexation of the Property to the Town and the zoning and development of the Property; and

**WHEREAS**, this Agreement shall supersede the Annexation and Development Agreement dated November 10, 2009, which was adopted by Ordinance 8 (Series 2009).

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Developer agree as follows:

1. **Purpose.** The purpose of this document as an Annexation and Development

Agreement is to set forth the terms and conditions of the annexation, zoning, and development of the Property. Moreover, the parties agree and acknowledge that it is their intent that this Agreement shall be enforceable as an annexation and development agreement, and that the Developer waives any objection to the enforcement of this Agreement as a contractual obligation. Thus, this Agreement is intended to provide a contractual relationship between the Town and the Developer to ensure compliance with all requirements contained herein, including, but not limited to, restrictions upon the zoning of the Property stated herein and referenced in Town of Buena Vista Ordinance No. 11 (Series of 2009). Except as expressly modified herein or in other approval ordinances or resolutions of the Town regarding Cottonwood Meadows, all conditions herein are in addition to any and all requirements of the Town of Buena Vista Municipal Code (hereinafter "Town Code"), the Buena Vista Public Works Standards, as may be adopted by the Town and amended from time to time, and any and all statutes of the State of Colorado.

**2. Binding Effect.**

(a) This Agreement shall be binding upon and inure to the benefit of the Town, Developer and any party succeeding to any interest of Developer in and to any parcel for which final plat approval has not occurred. The obligations (specifically including, but not limited to, the payment of fees and compliance with any zoning requirements and covenant obligations as may be referenced herein) that run with the land following final plat approval shall be limited to those set forth herein, or on any final plat or in any other development approval document, and any exhibits or attachments thereto.

(b) Except as provided in Paragraph 15 of this Agreement and any other agreement(s) between the Town and Developer, this Agreement may be enforced, amended, modified, removed or released only by the Town, Developer and any party succeeding to any interest of Developer in and to any part of the Property which has not been granted final plat approval.

**3. Development of Property.** The Property shall be developed according to the following provisions:

(a) The PUD Zoning has been approved containing six zone districts, namely Mixed Use (T4-MU), Residential Mixed (T3-RM), Residential (T3-R), Open Space CSA Reserve (T2-A), Open Space (T2-O) and Agriculture (A), as contained in the Regulating Code attached to Ordinance No. 11 (Series 2009).

(b) The PUD Plan (which term includes the site plan required by Town Code) and Sketch Plan filed as part of the First Amended Petition and Other Applications of Cottonwood Meadows are approved.

(c) This Annexation and Development Agreement has been approved by Ordinance No. 19 (Series 2010).

(d) Notwithstanding the approved PUD Plan and Sketch Plan, the Developer shall achieve the following standards by the time the Property is fully platted:

(i) There shall be no more than 592 residential units, some of which may be live/work units (exclusive of accessory dwelling units), 125 senior living units and other uses and amenities shown on the Sketch Plan.

(ii) The Property set aside in Zone Districts T2-A, T2-O and A shall equal at least 103 acres.

(iii) The Property set aside in Zone Districts T2-A shall equal at least forty-five (45) acres.

(e) The PUD Plan designates 113.73 acres of the Property in Zone Districts T4-MU, T3-RM and T3-R and designates the balance of the Property as T2-O, T2-A, or A. Notwithstanding the PUD Plan, the Developer may seek to redesignate any portion of the Property designated on the PUD Plan as Zone Districts T4-MU, T3-RM and T3-R as Zone Districts T2-A, T2-O or A, provided, upon doing so, that portion of the Property now designated as Zone District A just prior to such redesignation may be planned by Developer as Zone Districts T4-MU, T3-RM and T3-R to the extent of the number of acres and units so redesignated by the Developer subject to the Town's approval of a revised PUD Plan applicable thereto, which shall be processed by the Town as an

amendment to the PUD Plan according to the procedure set forth in the Town Code. Upon approval of the Town, the Developer may make such redesignation by a recorded instrument, a copy of which shall be furnished to the Town. The Developer's right hereunder is intended to give Developer flexibility in responding to market demand in an uncertain economy without violating the standards set forth in subparagraph (d) above.

(f) Developer's PUD Plan and Sketch Plan currently subdivides 113.6 acres of the Property as follows:

<i>Land Use Summary</i>	<i>Filing</i>	<i>Phase</i>	<i>Units</i>	<i>Acreage</i>	<i>Density</i>
Single Family Detached Cluster	1	1	80	18.7	4.3 DU/Ac.
Multi-Family Assisted Living	1	1	125	6.8	16.9 DU/Ac.
Medical Center / EMS / Police Substation	1	1	N/A	3.1	N/A
Neighborhood Retail / Mixed Use / Post Office	1	1	N/A	2.6	N/A
Church Site	1	1	N/A	4.3	N/A
Open Space	1	1	N/A	1.0	N/A
		1	205	36.5	21.2 DU/Ac.
Single Family Detached Cluster	1	2	83	22.3	3.7 DU/Ac.
Multi-Family	1	2	96	8.6	11.2 DU/Ac.
Martha's Restaurant	1	2	N/A	2.3	N/A
Open Space	1	2	N/A	12.6	N/A
		2	179	45.8	14.9 DU/Ac.
Single Family Detached	1	3	50	16.8	3.0 DU/Ac.

Single Family Detached Cluster	1	3	54	7.7	7.0 DU/Ac.
Open Space / Park	1	3	N/A	6.8	N/A
		3	104	31.3	10.0 DU/Ac.
SUBTOTALS Filing No. 1	1	1, 2, 3	488	113.6	N/A
Agriculture	Future	N/A	229	163.4	N/A
TOTALS	N/A	N/A	717	277.0	N/A

(g) During the preliminary plan and final plat process, additional refinements or modifications may be proposed by the Developer and approved by the Town. Subsequent phases may vary unit mix from that shown in the PUD Plan subject to prior approval of the Town..

(h) The Property may be developed in phases. Given the scope of the project, phase development is appropriate and is hereby approved by the Town pursuant to Chapter 16-206(d)(7)(b) of the Town Code. In light of the fragmented nature of the phasing plan, the Town shall further consider Developer's request to split the phases into smaller pieces for approval, provided adequate infrastructure is constructed as detailed below. In furtherance of the foregoing, the Developer intends to submit preliminary plans for the Property on a phase by phase basis, and development of the Property shall be consistent with the preliminary plan approval as well as PUD Plan approvals. The parties also agree that, to be able to respond to market forces, the phasing plan may be modified at any final plat submittal for that purpose.

(i) The parties agree that Developer, proceeding at Developer's own risk, shall submit its First Phase Plan as a combined preliminary/final subdivision plat for Phase 1 of the Property, if Phase 1 consists solely of the Senior Living Facility. Subsequent phases or any other subdivision applications must follow the separate approval process for preliminary and final subdivision plats. Preliminary plans for all

phases shall address adequate infrastructure including roads, water and sewer, drainage, and related facilities. Notwithstanding the fact that the Town Code requires construction level engineering plans at the time of final plat, Developer shall provide detailed infrastructure construction level engineering plans at each preliminary plan for review and approval by the Town Engineer.

(j) At the time an application for a preliminary plat for the first residential lot is filed, the Town may request Developer to provide a letter from a mutually acceptable transportation consultant, addressing whether the design of the development, including the streets, meets established traffic flow requirements. If traffic flow issues are identified in the requested letter, Developer shall address the issues to the Town's satisfaction prior to approval of the preliminary plat for the first residential lot. At the time of preliminary plan for the plat containing the 135th residential lot, the Town reserves the right to require Developer to update the November 21, 2007 Traffic Impact Analysis prepared by LSC Transportation Consultants, Inc. (the "Traffic Study") and the December 13, 2007 Fiscal and Economic Impact Analysis (the "Economic Impact Study") prepared by Strategic Economics to determine whether population estimates, construction costs, build-out rates, revenues, and other projections are adequate or must be modified accordingly. In the event that such review identifies impacts not anticipated by the original Economic Impact Study and/or Traffic Study, the Town may require mitigation of such impacts as a condition of further platting. In the event that such review diminishes impacts previously stated, the Developer's mitigation obligations will likewise be diminished.

(k) At the time of final plat for each phase, Developer shall be entitled to approval if said final plat meets the standards for final plat approval set forth in the Town's Subdivision Code, which approval is subject to the requirement of execution of a subdivision improvements agreement ("SIA") that meets the Town Code requirements existing at the time the SIA is executed.

(l) A portion of the Property is depicted as "Future Filings". No development may occur and no building permit may be issued on such Future Filings unless and until



an amended PUD plan, phasing plan and final plat are approved and recorded as to such Future Filings and a subdivision improvements agreement executed with respect thereto. The Town and Developer hereby agree that phases after the First Phase may be developed in any order, subject to the terms and conditions of this Agreement; provided, however, that prior to final plat for each phase, the Town shall determine that the infrastructure (water, sewer, roads, etc.) to be constructed properly addresses the needs of that phase, including but not limited to appropriate looped systems for water system infrastructure, and that water rights and water supply sufficient to meet the needs of that phase are legally and physically available for such use.

(m) The Town acknowledges its authority under Code §16-195 upon final platting under the Town's subdivision regulations to waive or modify the specifications, standards and requirements which would be otherwise applicable to the development if requested by the applicant. Further, the Town acknowledges that the configuration and mix of the units and a PUD Plan may be modified as provided in Code §16-215(a), but no portion of the density allocation may be transferred to land not included in the PUD Plan. None of the provisions of the PUD Plan run in favor of the residents, occupants and owners of the PUD and the portions of the Property not subject to a final plat and the provisions of the PUD Plan shall not be subject to enforcement except according to the terms of this Agreement and the portions of the Property covered by the final plat. The Developer may apply for modification, removal or release of any provisions of the PUD Plan by filing a petition for such modification, removal or release with the planning commission followed by a public hearing before the Board of Trustees. No such modification, removal or release shall be authorized unless it is (i) consistent with the efficient development and preservation of the entire PUD, (ii) does not affect in a substantially adverse manner either the enjoyment of the land abutting upon or across the street from the PUD or the public interest, and (iii) is not granted solely to confer a special benefit upon any person. Any insubstantial amendments to the approved PUD Plan may be authorized by the Town Administrator on the terms set forth in Town Code §16-215(f) except as otherwise provided herein. Significant amendments shall be processed through the Planning Commission and the Board of Trustees pursuant to the Town Code.

4. **Vested Rights for Future Phases.** Approval by the Board of Trustees of this Agreement for the Property will create a vested property right for a period of fifteen (15) years from the effective date of the Ordinances providing such approval. A vested property right is the right to undertake and complete the Development under the terms of the site specific development plan described below. As a condition of the granting of such vested right, the Developer shall at its expense publish the vested rights notice required by C.R.S. §24-68-103(c) and the Buena Vista Municipal Code §17-41(j), and Developer shall comply with all other procedural requirements set forth therein. The parties agree and acknowledge that approval of the final plat for each phase of the Property and execution of a subdivision improvements agreement ("SIA") relating thereto shall constitute a site specific development plan as defined by C.R.S. §24-68-102(4)(a) and that such approval shall similarly result in the granting of vested rights for a period of five (5) years and, as to that phase, such period shall supersede and control over the 15 year vested rights period for the entire Property. Pursuant to the Town Code at Section 17-42(a)(5), the Town's duties under this Agreement are expressly conditioned upon Developer's substantial compliance with each and every term, condition, provision and covenant of this Agreement and any applicable SIA, all applicable federal, state and local laws and regulations, except as expressly modified herein, and in other approval documents pertaining to Cottonwood Meadows.

5. **Rights-of-Way and Road Improvements.** The following specific provisions address rights-of-way related to the property:

(a) ***Right-of-Way Dedications.*** Roads and rights-of-way shown on the PUD Plan as "Public Road" shall be dedicated by the Developer to the Town. Other roads and lanes not shown on the PUD Plan as "Public Road" shall be owned by and dedicated to the Cottonwood Meadows Homeowners Association. All roads shown as public or Homeowners' Association roads shall be dedicated as appropriate, concurrent with the filing of the final plat for each phase of Cottonwood Meadows. Notwithstanding the road and sidewalk designs and specifications shown on the approved PUD Plan for the Property, final determination as to the designs and specifications of such infrastructure shall be made at the time of preliminary plan for each phase. All roads on the Property will be paved with an asphalt surface rather than chip and sealed.

(b) **Access Points.** Developer is currently investigating the status of additional legal access to the Property from three or four locations. The Town agrees to work with Developer on access to the Property from Sangre de Cristo Avenue (Sangre de Cristo Street) access. Early deeds for the Sangre de Cristo property indicate a sixty (60) foot gap exists between that parcel and Cottonwood Meadows which could potentially impact access from that site. However, the gap may have become dedicated right-of-way at some point in the early 1900s. It appears that the adjacent property owners created a fence agreement essentially claiming one half of the right-of-way for each. Developer and the Town shall investigate ownership of the right-of-way.

(c) **Annexation of and Improvements to Crossman Avenue/CR 350.** As part of the first phase of development other than First Phase Plan which includes the Senior Living Facility, Developer shall prepare a Crossman Avenue/CR 350 annexation plat for signature by Chaffee County. The Town and Developer agree to analyze the structural integrity and condition of those segments of CR 350 from the Town limit westerly to CR 353. Developer will be responsible to have a pavement condition evaluation performed and accepted by the Town. The Town will require the annexed portion of CR 350 to be compliant with Town street standards. The Developer's obligations with respect to CR 350 terminate at the westernmost frontage of the Project along CR 350 (approximately 1 mile west of the existing Town limits) as generally shown on the sketch plan.

(d) **Modifications to CR 350.** To the extent that a right-of-way width of sixty feet (60') may be lacking along any segment of CR 350 which will not be vacated and which is adjacent the Property, Developer shall dedicate to the Town additional right-of-way from the Property. The Town shall review and approve or disapprove the design for the first entrance from Crossman Avenue into the Property as part of the approval of the First Phase Plan which includes the Senior Living Facility. The selected design shall be adequate to handle the traffic volume anticipated by the Traffic Study and may be modified in the future with approval of the Town as plats for additional phases are filed. Nothing herein contained shall be construed to require the Town to vacate any Town right-of-way.

(e) ***Improvements to Crossman Avenue/Highway 24 Intersection.*** The Town and Developer recognize that improvements to the Property will trigger needed improvements to the intersection of Crossman Avenue and Highway 24 which will require an access permit from the Colorado Department of Transportation ("CDOT"). The parties agree that the Town, not sooner than its approval of the Developer's second preliminary plat covering residential lots, shall apply for the CDOT access permit in its name but at Developer's expense. The Town and Developer further agree that the Town may hire a traffic engineer for the CDOT permit, with costs to be borne by Developer. Developer shall construct at its sole expense any and all improvements required by CDOT as part of the access permit approval. The Town acknowledges that these improvements create additional vehicle capacity over and above that required by the PUD Plan, that such capacity should be identified by qualified traffic engineers and that the Developer shall be eligible for cost recovery, from benefitted properties but not from the Town or Chaffee County, for the additional capacity from new construction and development within the identified service area for such intersection. To this end, the Town will seek to negotiate an inter-governmental agreement (IGA) with Chaffee County which will require a payment to the Town in an appropriate amount for such vehicular capacity caused by such development in the identified service area but excluding the Property as a condition to the issuance of a County building permit. If it is successful in obtaining such an IGA, the Town will periodically account to and pay over to the Developer such payments. If the Town is not successful in obtaining such an IGA, the Developer has the right to pursue cost recovery from the County in such manner as it deems appropriate.

(f) ***Construction Traffic/Temporary Turnarounds.*** The Town reserves the right to require, at Developers expense, an analysis of construction traffic routing associated with development of the Property as part of the preliminary plan for each phase to determine whether roads intended for construction traffic are designed adequately to handle the anticipated weight and volume of construction traffic. As part of such analysis, Developer shall propose plans intended to restrict construction traffic to certain designated routes. No construction traffic shall be permitted on County Roads 330, 331, 358 and/or 358a without a permit from the county. During construction on the

Property, Developer shall construct temporary turnarounds, hammerheads, and/or such other roadway features as may be necessary to direct traffic through the Property and provide for emergency access.

(g) ***Operation, Maintenance, Repair, and Replacement of the Public Rights-of-Way.*** Following acceptance by the Town of the public improvements to the road rights-of-way dedicated to the Town pursuant to the terms and conditions of the subdivision improvements agreement for any given phase, the Town shall be responsible for the operation, maintenance, repair and replacement of said rights-of-way, except as provided by the Town Code, and subject to any warranty requirements set forth in any subdivision improvements agreements.

(h) ***Dedication of Alleys.*** Developer and the Town agree that due to potential traffic volume and use as primary access to homes, all roadways shown as alleys shall be publicly dedicated rather than designated as easements for public use. In addition, a twenty foot (20') apron of asphalt or concrete pavement shall be constructed at both ends of each alley to minimize distribution of dirt and debris to paved streets. Notwithstanding such dedication, all alleys shall be maintained solely by the Cottonwood Meadows Homeowners Association at its expense. Any alleys within the T4-MU Zone District to be used for commercial deliveries or other alleys by mutual agreement shall be paved; provided however paved alleys shall be maintained by the Town. Consistent with Section 17-57-(b)(5) of the Town Code, other alleys may be gravel.

(i) ***Alternative Road Surfaces.*** If, at a later date, any chip and seal or gravel surfaced roadways in the Property are permitted, they shall be constructed to specifications agreed to by the Town and maintained and repaired by Cottonwood Meadows Homeowners Association. Such roadways shall be dedicated as public rights-of-way but not accepted by the Town for operation, maintenance, repair and replacement unless brought up to Town Code standards and paved with hot mix asphalt.

(j) ***Liability Insurance.*** For any and all roadways and trails to be maintained by the Cottonwood Meadows Homeowners Association, Developer or its successor in interest shall maintain a liability insurance policy naming the Town as an additional

insured in an amount of at least twice the limits of liability under the Colorado Governmental Immunity Act, as may be amended from time to time. Nothing herein shall constitute a waiver of said Governmental Immunity Act.

(k) ***Miscellaneous.***

(i) All road section designs shall include curb and gutter or concrete edging to support the edge of asphalt. Notwithstanding the street section diagrams contained in Exhibit 25 of the Second Amended Petition, road widths presented in the Regulating Code are measured from edge of asphalt or chip seal to edge of asphalt or chip seal.

(ii) At preliminary plan the Developer will provide road sections in addition to the plan views showing the relationship of roadway improvements in the right-of-way as well as thickness of base course, hard surfaces and other right-of-way improvements.

(iii) The Developer shall demonstrate the adequacy of corner radii for trucks, emergency and public works vehicles at the time of preliminary plat utilizing evaluation of software such as "Auto-Turn" or comparable software.

(iv) Street lighting utilizing "Dark Sky" compliant full cut-off fixtures will be shown on the preliminary plat at all intersections, crosswalks, (bollard lighting may be a suitable alternative where crosswalks are not located at an intersection).

(v) All crosswalks shall be constructed of colored and textured concrete to clearly designate crossings and to minimize long term maintenance. For other areas, crosswalk configuration will be evaluated at the time of preliminary plat.

(l) ***General.*** All roads and rights-of-way shall be dedicated by the Developer to the Town or the Cottonwood Meadows Homeowners Association, as appropriate, concurrent with the filing of the final plat for each phase of Cottonwood Meadows. Notwithstanding the road and sidewalk designs and specifications shown on the approved

PUD Plan for the Property, final determination as to the designs and specifications of such infrastructure shall be made at the time of preliminary plan for each phase.

**6. Open Space and Trails.**

**(a) *Trail Connections and Access.***

(i) *General Intent.* The Town and the Developer agree that the trails on the Property shall be dedicated, constructed, maintained and used as provided below. The Developer agrees that trails shall extend throughout the Property, to be demonstrated at the time of Preliminary Plat, and there shall be a trail extending across the entire Property at the time of final plat approval. Each final plat shall show where the trail is and its location shall be subject to Town approval. All trails are hereafter called "Trail Space". The Town and the Developer further agree that public access to the trails on the Property covered by a final plat is an obligation of the Developer. The Town agrees to accept a dedication of a permanent easement for trail purposes for trails which are laid out and improved by the Developer provided the trail right-of-way is at least ten feet (10') wide and the trail construction is at least four feet (4') wide and made with compacted aggregate.

(ii) *Crossman Trail.* Developer has represented to the Town its intent to construct a pedestrian way along Crossman Avenue from the Property east to the existing Town limits to provide safe pedestrian access to Town residents, which trail shall be constructed of asphalt or concrete pavement. The trail shall be constructed only if the Town and Developer are successful in working together to obtain the right-of-way to construct a trail a minimum width of at least six feet (6') with a minimum twelve foot (12') wide right-of-way to be dedicated to the Town on the Property. In the event the Town determines the Crossman Avenue right-of-way is not sufficient for the intended trail, Developer shall identify alternative trail connections and work with the Town to finalize plans and specifications for the alternative location. The Crossman Trail shall connect to the other trails as shown on each final plat.

(iii) *Trail Space Construction and Dedication.* The Town agrees to accept a dedication of a permanent easement for trail purposes of the land described as "Trail Space" on each plat subject to such revisions as the Town and Developer mutually agree to at the time of final plat approval covering land on which Trail Space is located. The Developer shall dedicate a permanent easement for trail purposes over and across the Trail Space covered by any plat as part of the plat approval process. Notwithstanding this dedication, the Developer shall retain possession of the Trail Space for five (5) years from such dedication or until the end of the Declarant Control Period per Colorado Revised Statutes, whichever first occurs, and during such time shall have the right to regulate the use and public availability thereof, subject to contrary grant agreements, and shall further have the obligation to maintain the Trail Space.

The Developer agrees to complete construction of the trails on the Trail Space by a grant phasing process or at its own expense no later than five (5) years after the date of delivery described in the Permanent Trail Easement attached hereto as Exhibit B and incorporated herein, provided Developer shall in any case complete the trails on that portion of the Trail Space included in any final plat submitted for approval with the completion of construction secured by the SIA applicable to such plat.

(iv) *Other Trails.* The Developer will construct trails on the Property other than the Trail Space as shown in any preliminary plan. Such trails and related easements shall be dedicated to the Town at its request but maintained and managed by the Developer, Homeowners Association or metro district formed by the Developer with the approval of the Town. The Developer and the Town shall deal with each other in good faith on whether trails on the Property other than the Trail Space shall be dedicated, managed and maintained by the Town.

(v) *Form of Dedication.* Exhibit B is substantially the form of dedication conveyance of the proposed Trail Space. In addition to the standards for use and maintenance of the Trail Space established in Exhibit B, the Trail





Space will be operated and maintained according to rules and regulations promulgated by the Town Trail Advisory Committee in consultation with the Developer and as approved by the Town.

(b) **Open Space.** Developer agrees that the Property when fully developed shall have at least 53 acres for parks, open space, trails, and recreational use. If dedicated to the Town, at the time of dedication, which shall occur upon approval of a final plat, the Developer shall provide assurances of adequate water rights and water supplies to perpetually maintain the dedicated properties for the uses for which such properties were dedicated, and shall dedicate sufficient water to the Town for such purpose if required by the Town. Such dedication, together with Developer's commitment to develop certain parks and trails features as set forth below and together with Developer's additional designation of 46 acres in Zone District T2-A, fully satisfies all open space and parkland dedication requirements in the Town Code or as may be amended in the future. Developer agrees that there is a rational nexus between: (1) the parkland dedication and park improvement obligations stated herein and the impacts upon the Town's park system caused by development of Cottonwood Meadows, and (2) the Developer's obligations under the Town Code. Notwithstanding the foregoing, if the Developer is unable to provide assurances of adequate water rights and water supplies to perpetually maintain the dedicated properties for the uses for which such properties were dedicated, Developer will be deemed not to have fully satisfied the Town Code requirements regarding open space and park land dedication and improvements requirements, and the Town may impose such requirement as a condition of further development of the Property.

As discussed in Paragraph 6(e) below, Developer also proposes the reservation of 46 acres for the CSA Parcel. In light of the dedication of 53 acres for parks, open space, trails and recreational use and the perpetual commitment of 46 acres for a CSA Parcel, the Board of Trustees hereby reduces the twenty-five percent (25%) open space requirement set forth at Section 16-205 of the Town Code. The Board finds that such decrease is warranted by the design, amenities, and features incorporated in the PUD Plan and that the needs of the occupants of the PUD for common open space can otherwise be



met.

Developer shall identify land which is parks, open space, trails or recreational use which shall be dedicated at the Town's request and constructed in each preliminary plan. Such construction shall be considered public improvements as part of the phase in which they are located and shall be included in the SIA for that phase. Developer shall install initial public improvements on said open space according to the approved Landscaping Plan submitted with each phase. Developer further agrees to guarantee the continuing viability of all such landscaping according to the provisions set forth in Paragraph 10(c) below.

Developer agrees to dedicate to the Town park acres with the first residential plat having lots adjacent to the park provided the park shall be developed on a reasonable time schedule to be included in the SIA. The plans for development and improvement of the park shall be reviewed and approved by the Town at preliminary plan for such phase.

(c) ***Real Estate Transfer Assessment.*** Developer hereby agrees to the imposition by voluntary covenant of a real estate transfer assessment ("RETA") of one percent (1%) of the gross purchase price for any residential lot or unit located within the Property to be payable to the Town on the second sale of lot or unit. Subject to annual appropriation by the Board of Trustees, the Town agrees to prioritize the proceeds of the RETA for open space, trails and park development and maintenance on the Property. The Town further agrees to separately account for such RETA funds, hold them in trust for the purposes herein set forth, and consult in advance with the Developer or Cottonwood Meadows Home Owner's Association on prioritization and expenditures. The form of the Declaration of Covenant shall be approved at the time of the first residential plat.

(d) ***Formation of Special Districts.*** The Town and Developer agree to consider cooperating in the formation of a Parks and Recreation District, which boundaries shall be larger than the Town and generally consisting of northern Chaffee County. In contemplating formation of a Parks and Recreation District, the Town agrees to consider dedication of trails to the District, but the Town shall not be obligated to

dedicate some or all of its parks to the District. Subject to compliance with statutory procedures, the Developer intends to form a metropolitan district with boundaries coterminous with or within the boundaries of the Property for construction and management of a water system. To the extent Town approvals are required in connection with the formation of the foregoing districts or other districts deemed necessary by the Developer, the Town will not unreasonably withhold such approvals, so long as the Town's own rights and interests are not adversely affected by such districts, and provided the Service Plan for the first metropolitan district shall be approved or conditionally approved at the same time as this Agreement as a condition to the validity of this Agreement.

(e) ***Community Supported Agriculture (CSA) Parcel.*** As part of its commitment to the CSA program and no later than approval of the first final plat covering the Property except for the 113.73 acres covered by the PUD Plan, Developer shall designate not less than forty-six (46) acres in Zone District Agricultural for the CSA Parcel and make arrangements to insure that such 46 acres, together with a sufficient amount of its raw water irrigation rights as are reasonably necessary to provide a reliable irrigation supply to the CSA Parcel for all intended agricultural uses in perpetuity. The water rights shall be dedicated or conveyed in a manner approved by the Town. The term "CSA Parcel" shall hereafter include both the 46 acres of land and such water rights. The CSA Parcel shall be restricted to agricultural uses and incidental educational, and other community service uses related to such agricultural uses. The Town and Developer agree that so long as the CSA parcel is used for agricultural and incidental educational and other community service uses related to such agricultural uses, agricultural zoning, including appurtenant agricultural structures and related water uses, for tax assessment purposes is appropriate for the CSA Parcel. Developer agrees to provide the Town with copies of all documents needed to effectuate the foregoing along with its agreement with the CSA Parcel operator. Any agreement with a CSA Parcel operator shall require the CSA Parcel operator to relinquish its interest in the CSA Parcel to Developer or the HOA, depending on the level of build-out of the Property, if certain performance standards to be established by Developer and approved by the Town (to determine consistency with the Developer's filings) are not met. The parties agree that the CSA

Parcel shall remain in agricultural use with related activities as permitted in the CSA Zone District or as open space in perpetuity and no other development shall be permitted. Developer shall have no obligation to convey the CSA Parcel to any entity but shall be required to act as operator or cause the CSA Parcel to be operated according to this Agreement.

Unless Developer provides substitute water rights of equal amount and priority, and acceptable to the Town, the Town and Developer agree that the water rights needed by and for the agricultural and open space use of the CSA Parcel shall remain appurtenant to the CSA Parcel and be made available for that purpose in perpetuity. C.R.S. §35-3.5-103(5) shall apply and the exception related to voluntary annexation after July 1, 1981 does not apply.

Notwithstanding the foregoing, the Developer may propose, subject to approval of the Town's Board of Trustees, use of the CSA Parcel differently than set forth above if a suitable operator properly funded does not arise by the time the Developer is ready to plat residential lots adjacent the CSA Parcel and the Town agrees not to unreasonably withhold consent to such proposed use so long as any such alternative use is for public outdoor open space purposes and water rights and water supplies sufficient to maintain such alternative purpose remain dedicated to the CSA Parcel.

**7. Civic Sites/Public Amenities.** Developer shall submit proposed plans for civic and other public sites shown on the PUD Plan at the time of the second preliminary plan for the Property other than the First Phase Plan. The Developer shall own and control all civic sites shown on the PUD Plan made by it for five years from the completion of construction and thereafter shall, if the Town requests, turn over ownership and management to the Town upon the Town's submission of a management plan relating thereto. Plans and specifications for additional civic sites shall be subject to review and approval by the Town and shall include at least one men's and women's public restroom in an approved location, which shall be constructed in conjunction with the first civic site. Regardless of ownership, all civic sites identified on the PUD Plan for the Property shall be made available to the public upon completion of construction. Developer agrees adequate land within the parks and open space

parcels will be made reasonably available for offsite parking, as needed. The Developer will dedicate to the Town a lot for EMS and police substation and assure sufficient water supplies for such uses. The Town and Developer will cooperate in determining whether other civic sites shall be dedicated to the Town. Nothing herein contained shall be construed to require the Town to assume ownership or maintenance of any civic sites.

**8. Fire and Emergency Services.**

(a) **Ladder Truck.** Developer agrees that without acquisition of a new ladder truck to serve Cottonwood Meadows and the Town, building heights in excess of thirty-five (35) feet shall not be permitted on the Property.

(b) **Emergency Facilities.** As provided in paragraph 7, Developer agrees to locate a civic or other site on the Property for use as an EMS and police substation and to assure the availability of sufficient water supplies for such uses. Options for creating such a structure are still being explored. Finalization of a plan for construction, if any, shall occur no later than the second final residential plat.

(c) **Exclusion from Fire Protection District.** Because the Town provides fire protection services, the Town shall initiate a process to exclude the Property and other areas in the Town also located within the Chaffee County Fire Protection District from the District, with costs for processing the application to be shared with Developer based on the percentage of total acreage being excluded. The Town Administrator shall contact the Fire Protection District to initiate the exclusion and determine what additional properties may be eligible for exclusion at this time. The costs of exclusion for additional, eligible properties within the Town shall be borne by the Town.

**9. Modifications from Town Code.** Pursuant to Section 16-195 of the Town Code, the following modifications to the Town Code are hereby approved subject to the terms and conditions set forth herein.

(a) **Senior Living Facility.** The Town agrees to process the First Phase subdivision application as a combined preliminary/final plat if the First Phase consists solely of the Senior Living Facility; provided, however, that Developer shall show the

existence of adequate water supplies as well as adequate water, sewer, and other infrastructure to serve the parcel, and further provided that Developer shall assume all risks of submitting a combined preliminary/final plan application. Any and all public improvements serving the Senior Living Facility parcel shall be designed and constructed on a stand alone basis.

(b) **Trees.** Developer has requested, and the Town has agreed to, a modification of the Town Code Section 17-57(b)(9) requirements for street trees on the Property, provided that the total number of street trees planted meets the minimum Town Code requirements. The parties further agree that Developer may pursue planting trees on the Property rather than delegating the work to the Town as contemplated by the Town Code. However, prior to proceeding with tree planting associated with any final plat, Developer shall submit to the Town for review and approval detailed landscaping and tree planting plans showing the location, caliper, and type of all trees for that phase of the Property, and demonstrate that adequate water supplies are legally and physically available to irrigate such trees as needed. Finally, given the size of the Property and the numerous trees already located thereon, Developer proposes eliminating the tree survey requirement of Section 17-28(f)(1)(d) of the Town Code, and the Town agrees to this waiver provided that Developer otherwise complies with the terms and conditions of the Section. Further, as part of each preliminary plan submittal, Developer shall identify any and all trees to be removed as part of development of that phase.

(c) **Building Height.** Developer has requested a variance from the Town's maximum building height of thirty-five (35) feet as established at Section 16-245 of the Town Code. As detailed in Section 8(a) herein, the Town's obligation is to protect the health, safety, and welfare of its citizens. Thus, the building height variance shall not be approved until and unless adequate emergency equipment is acquired to serve the Property and the Town.

(d) **Lots Not Fronting on a Public Street.** Developer proposes that certain lots be created in later phases of development that do not front on public streets but rather on streets owned and maintained by the Cottonwood Meadows Homeowners Association.

Developer agrees to expressly disclose the existence of such lots in any phase by plat note and in the master covenants for the Property.

(e) ***Review and Inspection Fees.*** The PUD Agreement required by Code §16-214 will necessarily contain provisions for inspection of improvements. Pursuant to Chapter 17-72 of the Code, the Developer is obligated to pay to the Town 5% of the estimated cost of installing public infrastructure/improvements required as part of any subdivision approval toward construction inspection fees. The Town agrees to hire construction inspection services according to the same procedure as is applicable to the Town's need for hiring professional services to process or evaluate the PUD application as set forth in Section 2.4.3 in the Pre-Annexation Agreement dated March 27, 2006. In lieu of paying 5% of the aforementioned construction costs, the Developer agrees to pay the Town such fees in advance as quoted by the contractor doing the inspection plus an additional fifteen percent (15%) of such fees as a contingency. Notwithstanding, if the actual billings are less than the funds deposited, the Town agrees to return the same to the Developer. If the actual costs are greater than those estimated, the Developer agrees to contribute all additional amounts required to the Town upon demand. Nothing herein shall preclude the Town from using its normal consultants so long as such consultants prepare a fair and competitive bid of the work to be performed in advance. The parties acknowledge that the lowest bid may not be the best or most appropriate bid.

(f) ***Water Requirement.*** So long as water service is provided to the Property by the proposed Cottonwood Meadows Metropolitan District, the Town specifically waives in whole its right to demand water dedication or cash in lieu as permitted by Town Code §15-3(d)(2) based upon its finding that such waiver would serve the best interests of the Town inasmuch as the Town is not expected to be the water provider for the Property. Developer specifically waives any right or entitlement to water service from the Town other than the one hundred fifteen (115) exempt water taps described in paragraph 11(d) of this Agreement and any taps (not to exceed nine) acquired by Developer from Ivy League Corporation as permitted by paragraph 11(c). The unavailability of Town water service to the Property shall not constitute a failure to serve

pursuant to C.R.S. § 31-12-119 and Developer waives any right to file a petition for disconnection of the Property from the Town based on the unavailability of water service.

**10. General Conditions for Entire Property.**

(a) ***Subdivision Improvements Agreement.*** Developer agrees to enter into a Subdivision Improvements Agreement ("SIA") as a condition of any Final Plat approval for the Property in a form as may be in use by the Town, as approved by the Town Attorney, and as required by the Town Code. The SIA for any phase shall include phase-specific provisions as necessary.

(b) ***Solid Waste Collection.*** Refuse collection for the Property shall be the responsibility of the Cottonwood Meadows Homeowners Association. All provisions of the Buena Vista Municipal Code regarding solid waste collection and disposal shall apply. The Town shall not be required to enter upon private streets for the purpose of solid waste collection. Except during construction, trash receptacles shall be screened in accordance with Section II(C) of the Town of Buena Vista Planting Guide.

(c) ***Landscaping.*** Landscaping and tree planting plans, including irrigation systems, and water supplies sufficient to provide irrigation for such landscaping and tress, for each phase of development on the Property shall be reviewed and approved by the Town at the time of preliminary plan approval for each phase, and landscaping shall be considered a public improvement governed by the provisions of the subdivision improvements agreement for that phase and requiring an appropriate letter of credit or other security acceptable to the Town. Developer further agrees to submit an onsite streetscape plan as part of the first preliminary plan for the Property other than the Senior Living Facility and other tracts where open space and roads are to be owned and maintained by the Homeowners' Association. These tracts shall have their own Landscaping Plan. Pursuant to the Town of Buena Vista Planting Guide at Section I(E)(5) and the Town Code at Section 17-58(h), Developer shall warrant all seeding and/or plantings against disease and death for a period two (2) years from the date of planting. As required by the Town Code, Developer shall be required to promptly remove and replace dead or dying plantings and to post financial security securing the



replacement of diseased and/or dead plantings with identical or comparable live and healthy plantings during the initial two (2) year growing (warranty) period. As detailed in Paragraph 9.b. herein, the Town agrees to a modification of the Town Code requirements for street trees on the Property, provided that the total number of street trees planted meets the minimum Town Code requirements. The Town also agrees to discuss certain modifications to the Planting Guide concerning types of trees planted on the Property, as Developer is exploring the potential of utilizing local fruit tree varieties.

(d) ***Cost Recovery for Shared Infrastructure.*** At each preliminary plan, to the extent Developer proposes construction of infrastructure with potential for use by third parties, Developer shall identify such infrastructure that shall be eligible for cost recovery consistent with the provisions of the Town Code, as may be amended.

(e) ***Noxious Weed Control/Maintenance.*** The Developer agrees and acknowledges that it shall, pending and during development of the Property, control the growth of noxious weeds on all parcels within the Property as required by the Buena Vista Public Works Director and the Town Code, as appropriate. The Property shall be maintained in a predominantly weed-free condition.

(f) ***Covenants and Restrictions.*** At the first phase of development for the Property, Developer shall incorporate a master association for the Property to be known as the Cottonwood Meadows Homeowners Association or such other name as Developer may select; provided, however, that the proposed Senior Living Facility and commercial space may be exempt from such homeowners association. Covenants for the Senior Living Facility parcel shall state that the owners agree to be bound by the master covenants for the Property, which shall be reviewed and approved as part of the first phase of development other than the Senior Living Facility, which master covenants shall supersede and control over any covenants approved for the Senior Living Facility. Subsequent sub-association and sub-area covenants shall be reviewed and approved as part of final plat approval for each phase as may be necessary. If such sub-associations are formed, at the time of each final plat a plat note shall provide that the property which is the subject of the final plat will be included in one or the other association by separate

declaration recorded simultaneously with the final plat. The Town shall have an opportunity to review and approve all such covenants before they are adopted to assure consistency with this Agreement and the Developer's approved preliminary plans and plats.

(g) **Parking.** Each phase of Cottonwood Meadows PUD shall possess sufficient parking to meet the residential and commercial needs of the phase. If a particular phase requires construction of one or more of the public parking areas, such parking shall be constructed as part of that development phase. If off-street parking is to be allocated for commercial, office, or retail uses as contemplated by the Regulating Code for the Property, the sufficiency of such must be demonstrated at the time of each final plat. Further, any and all off-street parking shall comply with the requirements of Section 16-233 of the Town Code, which states that off-street parking spaces must be located within four hundred (400) feet of an intended destination, or with the applicable provisions in the approved Regulating Code. At the time of the first preliminary plan for the Property other than the Senior Living Facility, Developer shall submit a conceptual parking plan for the entire Property, which shall be further refined on a phase by phase basis in subsequent preliminary plans. At the time of lot sales for commercially zoned property, Developer shall specify in writing the location and allocation of all off-street parking appurtenant to a lot. Developer shall notify the Town in writing of such allocation and record the specifics of the allocation with the Chaffee County Clerk and Recorder. At the time of building permit application, each property shall be required to demonstrate adequate parking associated with its proposed use. No building permit shall be issued if adequate parking cannot be demonstrated.

(h) **Drainage.** The Town or the Cottonwood Meadows Homeowners Association shall own, maintain, repair, and replace drainage facilities for the Property as may be approved by the Town, unless the Town agrees, in its sole discretion, to own, operate, maintain, repair and replace such drainage facilities. Drainage facilities shall be approved by the Town at the time of each final plat for each phase of the Property and shall be constructed by Developer according to an approved drainage report as public improvements pursuant to the terms and conditions of the subdivision improvements

agreement for that phase. The parties agree and acknowledge that drainage facilities to serve each phase may be located in areas that are outside that phase. In such event, Developer shall grant the Town and/or the Homeowners Association, as appropriate, the necessary easements for access, operation, maintenance, repair and replacement of such facilities. For any drainage facilities proposed to be owned and maintained by the Cottonwood Meadows Homeowners Association, the Town shall be a third party beneficiary with the right but not the obligation to operate, maintain, repair, and replace the facilities with costs billed to the Homeowners Association in the event that the Association fails to fix a deficiency following notice and opportunity to cure within a reasonable time.

(i) ***Accessory Dwelling Units.*** Accessory dwelling units (ADUs) shall be a special use by review for all phases of the Property and subject to the requirements of the Town Code for special uses, and subject to demonstration to the Town's satisfaction that adequate water supplies are available for such ADUs. A maximum of one ADU will be permitted per single family lot, and all ADUs must conform to definitions in the Regulating Code for the Property. In the event that the number of ADUs approved for the Property reaches a total of fifty (50), a revised traffic impact study shall be prepared at the Developer's costs and the Town reserves the right to consider assessment of an offsite street impact fee for any and all ADUs in excess of that number. ADUs shall not be included in the total dwelling unit count for the PUD and shall not impact the total density for the PUD. Subdivision and/or condominiumization of ADUs shall be prohibited.

(j) ***Lighting.*** The Town agrees that Developer may apply for approval of a lighting plan as an amendment to the PUD Regulating Code for the Property as part of any preliminary plan for a phase other than the Senior Living Facility, which lighting plan shall be deemed an insubstantial amendment to PUD zoning for the Property and subject to review and approval by the Town Administrator. In the absence of such a supplemental plan, lighting standards for the Property shall be governed by the Town Code, as may be amended from time to time. Under either scenario, street lighting for each phase of the Property shall be reviewed by the Town at the time of each final plat

and shall be constructed by Developer as public improvements pursuant to the terms and conditions of the subdivision improvements agreement for that phase. In the event street lighting features serving a particular phase are located outside that phase and not within a dedicated public right-of-way, Developer shall grant the Town an easement for operation, maintenance, repair and replacement of such features.

(k) **Signage.** Developer agrees to be bound by the terms and conditions of the sign code regulations set forth in the Town Code, as may be amended from time to time, unless Developer submits a supplemental sign code specific to the Property as part of PUD zoning, which sign code shall be deemed a major amendment to PUD zoning for the Property and subject to review and approval by the Planning and Zoning Commission. Street signage for each phase of the Property shall be reviewed by the Town at the time of each final plat and shall be constructed by Developer as public improvements pursuant to the terms and conditions of the subdivision improvements agreement for that phase. In the event street signage features serving a particular phase are located outside that phase and not within a dedicated public right-of-way, Developer shall grant the Town an easement for operation, maintenance, repair and replacement of such features.

(l) **Architectural Design Standards.** As part of the first preliminary plan for the Property other than the Senior Living Facility, Developer shall propose architectural standards, development standards, and/or design guidelines that will be enforced as part of the covenants for the Property. Substantial and material changes that affect the character and integrity of the development shall be subject to approval by the Town; provided, however, that the Town shall not be responsible for enforcement of architectural standards and/or design guidelines for the Property. Instead, Developer and/or the Cottonwood Meadows Design Review Board shall enforce architectural and design standards for the Property, including, but not limited to, the Cottonwood Meadows Development Standards. The Town shall have no liability for issuance of building permits for which Design Review Board approval has not been obtained but will endeavor not to issue building permits absent Design Review Board approval.

(m) ***Service by Buena Vista Sanitation District.*** At the time of the first preliminary plan application for the Property, Developer shall provide evidence of its inclusion in the Buena Vista Sanitation District and, at each preliminary plan, evidence of the District's willingness and capacity to serve each phase of the Property with sewer service.

(n) ***Encroachments.*** Any and all permanent encroachments on the Town's right-of-way shall be subject to the Town's encroachment license provisions as set forth at Chapter 16, Article XII of the Town Code.

(o) ***Snow Storage.*** Snow storage locations shall be identified at the time of preliminary plan for each phase of development on the Property and subject to review and approval by the Town. Developer shall also consider the designation of one or more snow removal routes on the Property and consider related impacts to parking.

(p) ***Dimensional Requirements.*** At the time of preliminary plan for each phase, Developer shall submit a plan showing lot setbacks effectively creating building envelopes which may be more restrictive than the baseline dimensions established in the PUD Regulating Code for the Property.

(q) ***Construction in Floodplain.*** Developer acknowledges that some lots may be located within the FEMA 100 year floodplain. It is Developer's intent to apply for a Letter of Map Revision ("LOMR") for the Property that eliminates these encroachments. However, until such time as the LOMR may be obtained, the Town shall require a detailed survey and flood elevation certificates at building permit for any lot, street or other structure located within the floodplain. All construction must be in compliance with all floodplain requirements.

(r) ***Utility Plans and Road Grades.*** Utility plans and road grades submitted as part of Developer's application for annexation, PUD zoning, PUD Plan, and Sketch Plan are not part of the approvals granted by the Town at this time.

(s) ***Payment in Lieu of Taxes.*** Beginning April 1, 2012 and annually thereafter, the Developer shall pay the Town \$5,000 in addition to all other real estate

taxes paid to the Town through Chaffee County, to compensate the Town for increased municipal services. Such payment shall continue until real estate taxes paid to the Town through Chaffee County exceed \$10,000. Such \$5,000 payment shall be increased by 3% per year beginning January 1, 2011. The payment due April 1, 2012 is for the year 2011 with subsequent payments due accordingly.

**11. Water Service.**

(a) ***Town Water Not Available.*** Although the Town owns and operates the Town of Buena Vista municipal water system in accordance with the laws of the State of Colorado, and in accordance with its rules, regulations, policies and resolutions, the Town and the Developer have agreed that the Town will not provide water service to the Property other than as specifically set forth herein. Instead, the Developer has submitted a proposed service plan for the Cottonwood Meadows Metropolitan District (the "District"). If the District is formed in the manner required by Colorado law, acquires the necessary water rights and water supplies, and is approved as a Community Water System by Colorado Department of Public Health and Environment (CDPHE) the District will provide water service to the Property. This Agreement will terminate and will be of no effect if a Court decree forming the District is not entered, within eighteen (18) months following the effective date of this Agreement, creating the District and empowering it to provide water service to the Property in the amounts and at the locations required for full build out and will further terminate, even if the District is so created, if the District is unable to acquire the water rights and water supplies necessary to provide water service to the Property in the amounts and at the locations required for full build out within two and one-half (2-1/2) years following the effective date of this Agreement.

(b) ***Town Waiver of Water Requirements.*** The Town Code requires that every application to annex property to the Town shall address the extension of the Town's water delivery system to serve the territory proposed to be annexed, utilizing the criteria set forth in the Town Code, and that every ordinance annexing territory not already served by the Town's water delivery system shall be accompanied by and incorporate a water service agreement. However, this provision can be waived by the

Town as provided in Town Code §15-3(d)(2). So long as the Town does not provide municipal water service to the Property, the Town has waived this requirement as set forth in paragraph 9.f above. Should the Town at any future time provide or commit to provide municipal water service to the Property, the Town's water line extension, water dedication, and related ordinances will be applied.

(c) ***Developer Waiver of Town Water Service.*** Developer specifically waives any right or entitlement to water service from the Town other than the one hundred fifteen (115) exempt water taps described in paragraph 11(d) of this Agreement and up to the other nine (9) taps, if acquired from Ivy League Corporation. The unavailability of Town water service to the Property shall not constitute a failure to serve pursuant to C.R.S. § 31-12-119 and Developer waives any right to file a petition for disconnection of the Property from the Town based on the unavailability of water service.

(d) ***Developer to Provide Water.*** The Developer agrees to provide adequate water service to its Project and the Property, by and through the District, in the amounts and at the locations necessary to meet all the water needs of the Property as set forth in this Agreement, and agrees that no final plat shall be approved unless Developer has demonstrated that an adequate, safe and reliable supply of water is available for the planned uses covered by such plat, including but not limited to all in-building water uses and outdoor irrigation, and the uses for parks, open space, and civic structures and amenities.

(e) ***Exempt Taps.*** The Town acknowledges that Developer is the holder of water taps for one hundred fifteen (115) water taps pursuant to the April 16, 1974 Ivy League Agreement between the Town and the Ivy League Corporation and that no fees in lieu of water rights dedication are due for such taps. Developer may use the 115 water taps on the Property provided that the cost of Town water main extensions required to provide water service to such water taps shall be borne entirely by Developer, such water main extensions shall meet all Town requirements and be approved by the Town Public Works Department, and that there shall be absolutely no commingling of or connection between the Town's water system and the water system to be provided by the District.

Ivy League Corporation has additional taps which Developer may acquire. The parties agree that these taps (not more than nine taps) have the tap fee paid and, subject to the requirements of this paragraph, said taps also may be used on any portion of the Property. Developer reserves the right not to use the 115 taps on the Property.

(f) ***Tap Fees and System Development Charges – Computation and Payment.*** All tap fees and system development charges for the one-hundred fifteen (115) Ivy League taps the Town has previously committed to provide to Developer shall be assessed utilizing the Town's prevailing applicable tap fees and system development charges at the time of issuance of a building permit for each phase of construction on which Developer intends to use one or more of such 115 taps. Currently the Town has established a tap fee of \$5,000 for a 3/4 inch meter, subject to change in the ordinary course of business, including any change to an EQR-based tap fee. No water service shall be provided to any structure using one or more of the 115 taps absent Developer's construction and the Town's approval of a water main extension to which such taps will be connected, payment of the appropriate tap fee, system development charges, and any applicable hookup charges as provided for in Town Code or as customarily charged (collectively "hookup charges"). Hookup charges for residential and commercial use shall be paid at the time of final plat unless the Town shall otherwise agree.

(g) ***Leesmeagh Dry-Up.*** The land known as the Big Meadows comprising approximately sixty-three (63) acres ("Parcel 4") has been historically irrigated by the Town's interest in water rights decreed to the Leesmeagh Ditch. The Town's water court decree in Case No. 83CW88 (Water Division No. 2) ("Decree") requires the Town to demonstrate dry-up of this land in order to use the Leesmeagh Ditch for municipal uses. Developer has agreed to take all actions required by the Town to demonstrate such dry-up as required by the Decree. Upon approval of the dry up by the State as required by the Town's decree, the Developer may use its own water rights legally and physically available to Developer to irrigate Parcel 4 if it can lawfully do so without violating the Town's decree or state water administration requirements.



The parties acknowledge that the CSA Parcel may be located in whole or in part within Parcel 4, and that the Town is currently undertaking dry up of Parcel 4, but has not completed this process. The parties also acknowledge that the amount of time required to demonstrate dry up as required by the Decree is unknown, and whether and to what extent Parcel 4 may be lawfully re-irrigated without violating the Decree or jeopardizing the Town's ability to utilize its interest in the Leesmeagh Ditch for municipal purposes as provided in the Decree is likewise unknown. Therefore, if all or any portion of the CSA Parcel is located in Parcel 4, the following procedure will be followed until Parcel 4 has been dried up as required by the Decree, and the Town's interest in the Leesmeagh Ditch has all been transferred to municipal use, or the Town has determined that dry up of all of Parcel 4 cannot be accomplished:

- (1) Subject to approval by the Division Engineer and the objectors in Case No. 83CW88, the Town shall transfer to municipal use the proportionate share of its Leesmeagh Ditch water right represented by the portion of Parcel 4 that can be demonstrated to have been dried up as required by the Decree as of the date this Amendment to ADA is approved. Said acreage is referred to as the "initial dry up acreage" and it shall be surveyed and monumented as provided in the Decree or as required by the Division Engineer.
- (2) Re-irrigation of the initial dry up acreage shall be permitted only as set forth in subparagraph (8) below.
- (3) The remainder of the Town's interest in the Leesmeagh Ditch shall continue to be used for irrigation on the remaining portions of Parcel 4 other than the initial dry up acreage. To the extent such remaining portions of Parcel 4 are included within the CSA parcel, the Town's interest in the Leesmeagh Ditch will be used to irrigate that portion of the CSA parcel.
- (4) The Town may cease irrigation of the remaining portions of Parcel 4 that are not within the CSA Parcel at such time as it deems appropriate. To the extent reasonably possible given the Town's schedule for transferring its Leesmeagh Ditch water right to municipal use, the Town shall work with the Developer to coordinate dry up of such



portion of Parcel 4 with the Developer's construction activities. The portions of Parcel 4 that are dried up and that are not located within the CSA Parcel may be re-irrigated only as set forth in subparagraph (8) below.

(5) The Town will give Developer notice when it plans to dry up the remaining portions of Parcel 4 that are within the CSA Parcel. The notice shall be give by October 31 of the calendar year preceding the calendar year in which the Town wishes to begin such dry up, and, if less than all of the remaining portion of Parcel 4 located within the CSA Parcel is to be dried up, the Town will identify the acreage that will be withdrawn from irrigation.

(6) The Town will cease irrigation of the portion of Parcel 4 described in the notice and Developer will not irrigate said portion of Parcel 4 until such time as dry up has been demonstrated as required by the Decree.

(7) When the Town has demonstrated dry up as required by the Decree of the noticed portion of Parcel 4 within the CSA Parcel, said portion may be re-irrigated only as set forth in subparagraph (8) below.

(8) All lands within Parcel 4 that are dried up as required by the Decree shall be surveyed and monumented as required by the Decree and/or the Division Engineer, and may be re-irrigated thereafter only if and to the extent such re-irrigation can be lawfully accomplished consistent with the Decree, and without jeopardizing the Town's ability to use the transferred portion of its Leesmeagh Ditch water right for municipal purposes, and without adversely affecting the Towns ability to demonstrate dry up of the remainder of Parcel 4. To the extent any portion of Parcel 4 that has been previously dried up is being re-irrigated as provided in this subparagraph, said re-irrigation will be curtailed if and to the extent necessary to enable the Town to prove dry up of the remaining portions of Parcel 4.

If by reason of the foregoing provisions, any part of the CSA Parcel located in Parcel 4 cannot be irrigated, the Town agrees to cooperate with the Developer, as necessary under applicable law, to permit Developer to assign to the Town and the Town

to accept such dry up acreage as Developer may separately have or be able to have in order that the CSA Parcel can be irrigated; provided that nothing will prohibit the Town from completing dry-up if necessary to fully utilize its interest in Leesmeagh Ditch water for municipal purposes.

(h) ***Raw Water Irrigation.*** Developer shall be permitted to use its water rights legally and physically available to it for irrigation of open space and parks, the Community Supported Agriculture parcel (CSA Parcel), and other public areas within the Property. At the time of the first final plat covering lots adjacent to open space or parks, other than the Senior Living Facility, Developer shall dedicate water rights necessary for irrigation, and fully adjudicated for such use, of open space and parks to the Town, which water rights shall be leased back to Developer for irrigation purposes on such open space and parks, for such period of time as the Developer, rather than the Town, is responsible for irrigation of the open space and parks. The leaseback shall be at a nominal rate, and shall require Developer to properly irrigate and maintain the open space and parks, and to operate and maintain the irrigation system. Developer may assign this leaseback to the Homeowner's Association at time of declarant turnover, so long as the Homeowner's Association agrees to accept it, or to the Town if the Town later assumes management of open space or parks. Developer shall have the right, subject to the Town's approval, to substitute alternate water rights for irrigation of the parks and open space if such alternate rights are legally available for such use, and are sufficient in quantity and legal priority for proper irrigation and maintenance of the parks and open space. Developer shall bear all costs, including the Town's reasonable attorney and engineering fees, involved in reviewing the suitability of the alternate water rights, and amending the water rights dedication and leaseback agreement. Developer hereby agrees to commit sufficient legally and physically available water rights in perpetuity to accomplish irrigation on the CSA Parcel as provided herein and shall be solely responsible for obtaining any required administrative or water court approvals for use of its raw water irrigation system. The Developer's commitment of such water rights shall be in the form of a conservation easement on the CSA parcel or a dedication or conveyance to an entity created to operate and oversee agricultural use of the CSA Parcel. The Developer grants to the Town a first right of refusal in the event Developer wishes to sell any and all water rights other than

those dedicated to the Town (or reserved by Developer for CSA purposes) for raw water irrigation on the Property.

(i) **Ponds.** No ponds will be constructed on the Property until and unless Developer demonstrates to the Town's satisfaction that sufficient legally available water rights and physical supply are in place to fill the ponds and augment evaporation. Developer may use its water rights for such purpose to the extent such water rights may be legally used for such purposes, if and to the extent such water rights are not required for other irrigation uses, such as CSA irrigation, and park and open space irrigation.

(j) **Water Tank Site.** A water tank site will be located on the Property.

(k) **Exempt Wells.** The Town agrees, notwithstanding Section 13-62(1)(e) of the Town Code, that the Developer may continue to use individual (exempt) wells currently on the Property in accordance with their exempt well permits. Developer shall provide the Town with an inventory of exempt wells located on the Property showing the location of each well and any available information regarding each well's permit, use and production. No new exempt wells will be allowed on the Property. Developer will not seek to change such exempt wells, or include them in any plan for augmentation to allow their use for non-exempt purposes, without prior written approval of the Town, which approval shall not be unreasonably withheld.

(l) **Construction.** Developer shall proceed with due diligence to construct the water transmission and distribution mains, lines and associated facilities in accordance with the plans and specifications and the construction schedule approved by the Town for each phase of development of the Property. No construction shall occur between November 1 and April 1 without written permission of the Town Public Works Department. Preliminary and final design drawings and plans, and standards and specifications for the water system infrastructure shall be approved in advance by the Town, and all construction shall be in accordance with the Town's standards and specifications or superior standards approved by the American Water Works Association.

(m) ***Rules Regarding Water Use.*** Developer agrees to adopt, and cause the Cottonwood Meadows Metropolitan District to adopt, reasonable rules and regulations governing the use of water on the Property and further agrees to prohibit all unnecessary or unreasonable waste of water on the Property.

(n) ***Easements.*** Developer shall reserve in perpetuity as-built, non-exclusive easements for water mains, lines, tanks, and other water facilities, along with all necessary access easements for maintenance and repair purposes ("easements"). All easements on, over or through Property located outside of public rights-of-way shall be surveyed and recorded at the Developer's cost. Absent qualified engineering advise to the contrary, and the Town's prior approval, the water main and water line easements must be at least ten (10) feet on either side of water mains and lines and must specify that (1) sewer lines must be located at least ten (10) feet from any water main or line, and (2) other utilities must be located at least five (5) feet away from any water main or line. Access easements and easements for tanks and other facilities shall be of a size reasonably necessary for the operation, maintenance and repair of the tank or other facility to be located on such easement. All such easements shall be conveyed or dedicated to the Cottonwood Meadows Metropolitan District.

(o) ***Cooperative Integration Respected.*** The Developer, individually or with the Cottonwood Metropolitan District, will coordinate the construction of its water lines and water system with the Town and so far as reasonably practicable and justified by sound engineering opinion, construct its system in a manner that would permit the merger of the Developer's water system serving the Property with that of the Town if, at a later date, that should be deemed in the mutual best interests of the parties.

(p) ***Limited Liability for Water Quality, Quantity, or Pressure.*** Developer agrees that the Cottonwood Meadows Metropolitan District will deliver the quantity and quality of water to the Project at pressures customary in municipalities and required by applicable fire codes. The Developer agrees that the Cottonwood Meadows Metropolitan District will treat its water to meet all mandatory local, state and federal potable water

standards and will exercise reasonable care and foresight in furnishing water hereunder equal or superior in quality to that currently furnished by the Town to its customers.

(q) ***Proof of Adequate Water Supply.*** As required by C.R.S. § 29-20-301 *et seq.*, no development permits shall be issued for the Property until the Town determines that the Developer has satisfactorily demonstrated that the proposed water supply will be adequate. That determination shall be governed by the provisions of C.R.S. § 29-20-301 *et seq.*

(r) ***Metropolitan District Service Plan.*** The Town has received the proposed Service Plan for the District and has conditionally approved the Service Plan. The obligations of the parties under this Agreement are contingent upon final approval of the Service Plan by the Town's Board of Trustees and the entry of a court decree forming the District in the manner provided by law, and the District's acquisition of sufficient legally available water rights and water supplies to meet the planned needs of the Property at full build out. Should a decree forming the District not be entered within eighteen (18) months following the effective date of this Agreement, or should the District be unable to secure, within two and one-half years following the effective date of this Agreement, sufficient legally available water rights and water supplies to meet the planned needs of the Property at full build out, the parties agree that either party may initiate disconnection of the Property from the Town and that the other party will stipulate to and sign any documents including petitions necessary to effect such disconnection.

12. **Zoning.** Developer consents to Planned Unit Development zoning for the Property with six (6) Zone Districts: Mixed Use (T4-MU), Residential Mixed (T3-RM), Residential (T3-R), Open Space-CSA Reserve (T2-A), Open Space (T2-O) and Agriculture District (A) as set forth in Town of Buena Vista Ordinance No. 11 Series of 2009.

13. **Assignment and Release.** This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties; provided, however, that the parties hereto shall not be released from the obligations set forth herein until and unless a delegation of such obligations is accepted in writing by the Town. If less than the entire Property is conveyed, the parties shall enter into a written agreement subject to review and approval by the Town, such

approval not to be unreasonably withheld, allocating the rights and responsibilities contained herein between and amongst the parties. Lonesome shall be released from its obligations under this Agreement upon exercise by Developer of its option to purchase the Property, but only in such event that Developer purchases the Property in its entirety.

14. **Breach by Developer; Town Remedies.** In the event of a breach of any of the terms and conditions of this Agreement by Developer, the Town may take any action necessary or appropriate, including:

(a) The refusal to issue any building permit or Certificate of Occupancy to the Developer; provided, however, that this remedy shall not be available to the Town until after the affidavit described in subparagraph b., below, has been recorded; provided further this remedy shall not be available against a bona fide third party.

(b) The preparation of a default affidavit approved in writing by the Town Attorney and signed by the Town Administrator or his designee, stating the specified terms and conditions of this Agreement which have been breached by the Developer, and the submittal of said affidavit to the Board of Trustees. Absent an emergency affecting the health, safety and welfare of Town citizens requiring the Town Administrator to immediately record such default affidavit, at the next regularly scheduled Board of Trustees meeting, the Board of Trustees shall either approve or disapprove the filing of said default affidavit with the Chaffee County Clerk and Recorder. If an approved default affidavit has already been recorded and the default has been cured, the Board of Trustees shall direct the Town Administrator to file a second affidavit nullifying the default affidavit so filed. Upon the recording of a default affidavit, no further parcels or portions thereof may be sold until the default has been cured; an affidavit signed by the Town Administrator or his designee and approved by the Board of Trustees stating that the default has been cured shall remove this restriction;

(c) A demand that any security given for completion of the public improvements be paid or honored;

(d) The refusal to allow further development review for the Property; or

(e) Any other remedy available in equity or at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town, the Town shall provide Developer ten (10) days' written notice of its intent to take any action under this paragraph, during which 10 day period Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless and until an affidavit as described in subparagraph b., above, has been recorded with the Chaffee County Clerk and Recorder, any person dealing with Developer shall be entitled to assume that no default by Developer has occurred hereunder.

15. **Waiver of Defects.** In executing this Agreement, Developer waives all objections it may have over defects, if any, in the form of this Agreement, the formalities for execution, or over the power of the Town to impose conditions on Developer as set forth herein, or over the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

16. **Final Agreement.** This Agreement supersedes and controls all prior written and oral agreements of the parties except for Paragraphs 1, 2.4.3, and 3 of the Pre-Annexation Agreement between the parties signed by the Town on March 27, 2006 which shall continue.

17. **Modifications.** This Agreement shall not be amended or modified, except by subsequent written agreement of the parties.

18. **Release of Liability; Breach by Town.** It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents, or their designees, except in accordance with the Town Code and the laws of the State of Colorado, and that Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town or its officers or agents, or their designees, which is subsequently held unlawful by a court of law; provided, however, that this paragraph shall not be construed to limit the rights and remedies of the parties otherwise provided by law, including under equitable doctrines of estoppel and the like. Any breach of this Agreement by the Town shall give rise only to equitable relief under state law and shall not give rise to any liability for damages or





violations of the fifth and fourteenth amendments of the U.S. Constitution or similar state constitutional provisions.

**19. Indemnity.**

(a) To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Town and the Town's agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, provided that such claim, damage, loss, or expense arises out of or from the following circumstances: any approval given during development review of the Property or, except to the extent of any actual negligence on the part of the Town, its agents, and employees, in connection with any item contained in this Agreement. Nothing herein shall be deemed a waiver by the Town of the provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

(b) Developer shall reimburse the Town at the Town's direction for all legal fees, expenses, and costs incurred in any action brought against the Town as a result of the Town's approval of this Development Agreement or of any other approval associated with the Cottonwood Meadows PUD in which the Town is determined not to be at fault or in breach of this Development Agreement or any other agreement with Developer to which the Town is a party. Such reimbursement obligations shall include all legal fees, expenses, and costs of an election ordered by referendum. The Town and Developer shall cooperate regarding defense of any such action to minimize Developer's liability costs. However, nothing herein shall obligate or compel the Town to take any position, stand, or proceed with any action or referendum position other than as the Board of Trustees, in its sole discretion, decides.

**20. No Liability for Approval.** Approval of this Annexation and Development Agreement for Cottonwood Meadows, including various components and subsequent approval of public improvements at each phase, including construction observation, shall provide no basis for liability by the Town or its officers, employees, and consultants.

21. **Voluntary Agreement.** Developer agrees to comply with all of the terms and conditions of this Annexation and Development Agreement on a voluntary and contractual basis, as terms and conditions of development approval. Developer agrees that the payment of all fees required under this Agreement is a condition of development approval and, therefore all such fees, whether in effect in the Town by ordinance or not (if repealed or not in effect, the last fee in effect shall apply and be paid), shall be imposed on Developer as a condition of any development review. Fees paid by the Developer as a deposit will be returned by the Town to the Developer to the extent not used. The obligation to pay such fees shall be a covenant running with the land and shall bind all successors in interest of Developer in and to any part of the Property which has not been granted final plat approval.

22. **Developer Representations.** All representations of the Developer, including oral representations made at public hearings before the Planning Commission or Board of Trustees not inconsistent with the written provisions contained in the documents referred to subsequently, or as set forth in the Cottonwood Meadows PUD application, as amended, and all documents subsequently submitted with reference thereto, shall be considered incorporated into this Development Agreement as if set forth in full herein.

23. **Certification of Compliance.** The Town will, upon request from interested parties, including prospective purchasers of all or any portion of the Property, or lenders to be granted a security interest in all or any portion of the Property, and within a reasonable period of time (not exceeding ten (10) business days) following receipt of each such request, issue appropriate written certification as to the compliance, or lack thereof, with any of the provisions hereof, including any such written representations and documents.

24. **Attorney Fees; Survival.** Should this Agreement become the subject of litigation between the Town and Developer, the prevailing party shall be entitled to attorneys' fees and costs of suit actually incurred, including expert witness fees.

25. **Notice.** All notices required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Mail with the proper address as set forth

below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the Town:           Town of Buena Vista  
  PO Box 2002  
  Buena Vista, CO 81211

With copy to:                 Town of Buena Vista  
  Town Attorney  
  PO Box 2002  
  Buena Vista, CO 81211

Notice to Developer:         The Meadows at Buena Vista, Inc.  
  PO Box 5266  
  Buena Vista, CO 81211

With copy to:                 Cogswell Law Offices, P.C.  
  PO Box 5266  
  Buena Vista, CO 81211

26.     **Title Policy.** Whenever there appears a requirement to dedicate land to the Town including parks and all streets, Developer shall provide a title policy in an amount to be determined by the Town at the time of the subdivision improvements agreement which shall indicate that the Property is free and clear of all encumbrances whatsoever which would impair the use of the Property as proposed in this Agreement or in any further document. Further, said title policy shall show that the Property to be dedicated to the Town is free and clear of all encumbrances which would make said dedications unacceptable to the Town as the Town, in its sole discretion, determines. Should such title policy reflect encumbrances which may impair the use of the Property as proposed or which would make the public dedications unacceptable, the Town shall notify Developer, who shall have sixty (60) days to cure or otherwise remove said encumbrances to the satisfaction of the Town Attorney. If said encumbrances are not cured or removed, the Town may take whatever action or seek whatever remedies it deems advisable, including without limitation disconnection from the Town or withholding of any development review approval.



27. **Special Joinders.** Lonesome and Jeffrey and Theresa Allen, by signing this Agreement at the places provided below, acknowledge that the property owned by them to the extent included in the Property is hereafter subject to this Agreement. Such persons and entity have no obligations as a Developer under this Agreement.

28. **Consequences of Referendum Petition.** If, following approval of this Agreement by the Town trustees, a referendum petition is timely filed with respect to any ordinance approving annexation of the Property to the Town or any other aspect of the Project including the PUD or Sketch Plan and such petition contains sufficient signatures to require an election as determined by the Town Clerk, then, at Developer's option, Developer may withdraw its Annexation Petition and this Annexation and Development Agreement shall be deemed void *ab initio*.

29. **Ambiguities.** Resolution of any ambiguities in this Agreement shall be governed by applicable Colorado law governing the construction and interpretation of contracts.

30. **Mutual Release.** When this Annexation and Development Agreement and all ordinances and resolutions related thereto are effective as provided by law and Developer has paid the Town as provided by paragraph 32, then the Developer and the Town, individually and for their respective trustees, officers and employees, shall mutually release each other from any and all claims and demands which they may then have against the other arising out of the Project, the Pre-Annexation Agreement dated March 27, 2007, the Agreement dated April 16, 1974, the general election of November 4, 2008 and any actions or inactions in any way related to the approvals of the Town on March 25, 2008 and September 5, 2008 and the hearings related thereto including statements and representations both during and outside such hearings.

31. **Withdrawal.** The Developer reserves the right to withdraw its Annexation Petition at any time before the ordinances approving this Agreement are effective as a matter of law.

32. **Fees and Costs.** Developer shall pay the Town \$31,431.09 in fees and costs incurred by the Town for services through the November 4, 2008 election as permitted by the

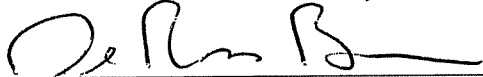


Pre-Annexation Agreement in accordance with the terms of a promissory note and deed of trust executed by Developer on August 17, 2009 and related letter agreement dated October 5, 2009.

**WHEREFORE**, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF BUENA VISTA, COLORADO

By

  
Joel Benson, Mayor

ATTEST:

  
Diane Spomer, Town Clerk

THE MEADOWS AT BUENA VISTA, INC.

By

\_\_\_\_\_  
President

LONESOME PINE HOLDINGS, LLC

By

\_\_\_\_\_  
John M. Cogswell, Manager

\_\_\_\_\_  
Jeffrey C. Allen

\_\_\_\_\_  
Theresa M. Allen

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46 of 60

7/29/2010 8:00 AM  
ORD R\$306.00 D\$0.00

JOYCE M. RENO  
Chaffee County Clerk

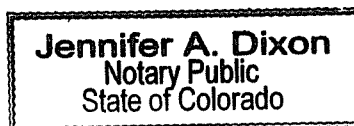
STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF CHAFFEE     )

Acknowledged before me this 2<sup>nd</sup> day of July, 2010 by Joel Benson, as Mayor, and by Diane Spomer, as Clerk, on behalf of the Town of Buena Vista, Colorado.

WITNESS my hand and official seal. My Commission expires: November 3, 2010

Jennifer A Dixon  
Notary Public

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF CHAFFEE     )



Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_ as President of The Meadows at Buena Vista, Inc.

WITNESS my hand and official seal. My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF CHAFFEE     )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by John M. Cogswell as Manager of Lonesome Pine Holdings, LLC.

WITNESS my hand and official seal. My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public


389036  
47 of 607/29/2010 8:00 AM  
ORD R\$306.00 D\$0.00JOYCE M. RENO  
Chaffee County Clerk

Pre-Annexation Agreement in accordance with the terms of a promissory note and deed of trust executed by Developer on August 17, 2009 and related letter agreement dated October 5, 2009.


WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF BUENA VISTA, COLORADO

By

  
Joel Benson, Mayor

ATTEST:

  
Diane Spomer, Town Clerk

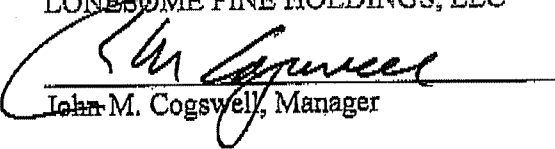
THE MEADOWS AT BUENA VISTA, INC.

By

  
President

LONESOME PINE HOLDINGS, LLC

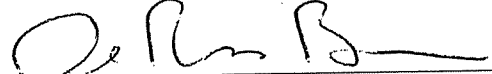
By

  
John M. Cogswell, Manager\_\_\_\_\_  
Jeffrey C. Allen\_\_\_\_\_  
Theresa M. Allen

Pre-Annexation Agreement in accordance with the terms of a promissory note and deed of trust executed by Developer on August 17, 2009 and related letter agreement dated October 5, 2009.

**WHEREFORE**, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF BUENA VISTA, COLORADO

By   
Joel Benson, Mayor

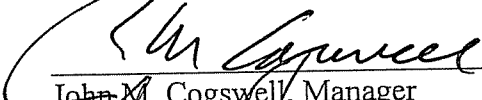
ATTEST:

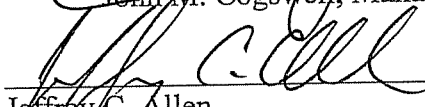
  
Diane Spomer, Town Clerk

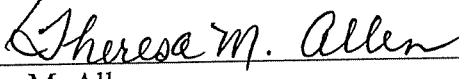
THE MEADOWS AT BUENA VISTA, INC.

By \_\_\_\_\_  
President

LONESOME PINE HOLDINGS, LLC

By   
John M. Cogswell, Manager

  
Jeffrey C. Allen

  
Theresa M. Allen





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49 of 60 ORD R\$306.00 D\$0.00

JOYCE M. RENO  
Chaffee County Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF CHAFFEE )

Acknowledged before me this 2<sup>nd</sup> day of July, 2010 by Joel Benson, as Mayor, and by Diane Spomer, as Clerk, on behalf of the Town of Buena Vista, Colorado.

WITNESS my hand and official seal. My Commission expires: November 3, 2010

Jennifer A. Dixon  
Notary Public

STATE OF COLORADO )  
 Jefferson ) ss.  
COUNTY OF CHAFFEE )

Jennifer A. Dixon  
Notary Public  
State of Colorado

Acknowledged before me this 6<sup>th</sup> day of July, 2010 by Gary Oman as President of The Meadows at Buena Vista, Inc.

WITNESS my hand and official seal. My Commission expires: 12/12/2011

Janelle Underminer  
Notary Public

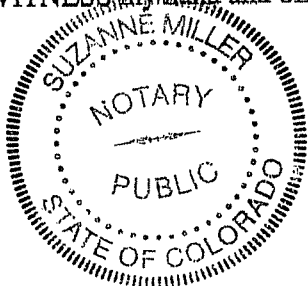
JANELLE UNDERMINER  
NOTARY PUBLIC  
STATE OF COLORADO

MY COMMISSION EXPIRES 12/12/2011

STATE OF COLORADO )  
 ) ss.  
COUNTY OF CHAFFEE )

Acknowledged before me this 6<sup>th</sup> day of July, 2010 by John M. Cogswell as Manager of Lonesome Pine Holdings, LLC.

WITNESS my hand and official seal. My Commission expires: 6/3/2013



Suzanne Miller  
Notary Public

389036

50 of 60

ORD R\$306.00 D\$0.00

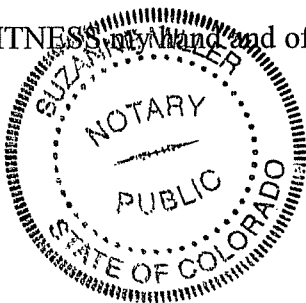
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JOYCE M. RENO  
Chaffee County Clerk

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF CHAFFEE     )

Acknowledged before me this 9<sup>th</sup> day of July, 2010 by Jeffrey C. Allen  
and Theresa M. Allen.

WITNESSES my hand and official seal. My Commission expires: 6/3/2013.



[Signature]  
Notary Public

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51 of 60

ORD

7/29/2010 8:00 AM  
R\$306.00 D\$0.00



JOYCE M. RENO  
Chaffee County Clerk

### EXHIBITS

Exhibit A-1	Legal Description for Serial Annexation
Exhibit A-2	Legal Description for Serial Annexation
Exhibit A-3	Legal Description for Serial Annexation
Exhibit B	Temporary Trail Easement Document

385409  
48 of 67

12/23/2009 08:00 AM JOYCE M RENO  
R\$336.00 D \$0.00 Chaffee County Clerk

389036  
52 of 60

7/29/2010 8:00 AM  
ORD R\$306.00 D\$0.00

JOYCE M. RENO  
Chaffee County Clerk

EXHIBIT A

LEGAL DESCRIPTION  
SERIAL ANNEXATION 1-A

ALL THAT TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7 AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 14 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER-CENTER EAST SIXTEENTH CORNER OF SAID SECTION 7, BEING MARKED BY A 2 INCH ALUMINUM CAP STAMPED LS 31544:

THENCE SOUTH 89° 37' 37" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7, A DISTANCE OF 1,315.74 FEET TO THE QUARTER CORNER BETWEEN SAID SECTION 7 AND SECTION 8;

THENCE SOUTH 89° 24' 49" EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8, A DISTANCE OF 661.74 FEET;

THENCE SOUTH 10° 18' 52" EAST, A DISTANCE OF 331.11 FEET;

THENCE SOUTH 06° 08' 28" EAST, A DISTANCE OF 346.14 FEET;

THENCE SOUTH 83° 33' 36" EAST, A DISTANCE OF 183.73 FEET;

THENCE SOUTH 89° 46' 34" EAST, A DISTANCE OF 76.87 FEET;

THENCE SOUTH 00° 25' 30" EAST, A DISTANCE OF 109.83 FEET;

THENCE NORTH 89° 07' 16" WEST, A DISTANCE OF 43.78 FEET;

THENCE SOUTH 00° 01' 31" EAST, A DISTANCE OF 193.29 FEET;

THENCE SOUTH 88° 41' 13" EAST, A DISTANCE OF 46.50 FEET;

THENCE SOUTH 00° 00' 25" EAST, A DISTANCE OF 338.92 FEET;

THENCE NORTH 89° 05' 18" WEST, A DISTANCE OF 190.03 FEET;

THENCE NORTH 89° 05' 18" WEST, A DISTANCE OF 818.87 FEET, TO THE SOUTH SIXTEENTH CORNER BETWEEN SAID SECTION 7 AND SECTION 8;

THENCE NORTH 89° 58' 42" WEST, A DISTANCE OF 562.65 FEET;

THENCE SOUTH 00° 00' 54" EAST, A DISTANCE OF 17.00 FEET;

THENCE NORTH 41° 18' 11" WEST, A DISTANCE OF 1,799.90 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7;

THENCE SOUTH 89° 37' 12" EAST ALONG SAID NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, A DISTANCE OF 422.59 FEET TO THE POINT OF BEGINNING.

EXHIBIT

A-1

385409  
49 of 67

12/23/2009 08:00 AM JOYCE M RENO  
R\$336.00 D \$0.00 Chaffee County Clerk

389036  
53 of 60

7/29/2010 8:00 AM  
ORD R\$306.00 D\$0.00

JOYCE M. RENO  
Chaffee County Clerk

**LEGAL DESCRIPTION  
SERIAL ANNEXATION 1-B**

ALL THAT TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTH SIXTEENTH CORNER BETWEEN SAID SECTION 7 AND SECTION 8, BEING MARKED BY A 2 1/4 INCH ALUMINUM CAP STAMPED LS 31544;

THENCE NORTH 89° 58' 42" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, A DISTANCE OF 562.65 FEET;

THENCE SOUTH 00° 00' 54" EAST, A DISTANCE OF 17.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 33° 24' 22" WEST, A DISTANCE OF 1,373.51 FEET;

THENCE NORTH 89° 54' 56" EAST, A DISTANCE OF 263.95 FEET;

THENCE NORTH 81° 23' 22" EAST, A DISTANCE OF 859.69 FEET;

THENCE NORTH 89° 32' 04" EAST, A DISTANCE OF 214.95 FEET;

THENCE NORTH 00° 26' 15" WEST, A DISTANCE OF 597.65 FEET;

THENCE SOUTH 86° 05' 26" WEST, A DISTANCE OF 569.32 FEET;

THENCE NORTH 00° 00' 54" WEST, A DISTANCE OF 456.93 FEET TO THE POINT OF BEGINNING.

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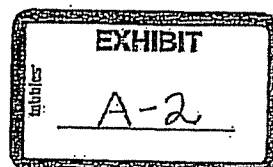
JOYCE M. RENO  
Chaffee County Clerk

**LEGAL DESCRIPTION  
SERIAL ANNEXATION 2**

ALL THAT TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 7, BEING MARKED BY A 2 INCH ALUMINUM CAP STAMPED LS 11944, FROM WHENCE THE CENTER-CENTER EAST SIXTEENTH CORNER OF SAID SECTION 7 BEARS SOUTH 89° 37' 12" EAST;

THENCE SOUTH 89° 37' 12" EAST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 7, A DISTANCE OF 60.04 FEET;  
THENCE SOUTH 00° 12' 56" WEST, A DISTANCE OF 649.34 FEET;  
THENCE NORTH 89° 51' 54" EAST, A DISTANCE OF 511.81 FEET;  
THENCE NORTH 27° 03' 12" EAST, A DISTANCE OF 414.43 FEET;  
THENCE NORTH 02° 20' 39" EAST, A DISTANCE OF 274.58 FEET TO SAID NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 7;  
THENCE SOUTH 89° 37' 12" EAST ALONG SAID NORTH LINE, A DISTANCE OF 124.20 FEET;  
THENCE SOUTH 41° 18' 11" EAST, A DISTANCE OF 1,799.90 FEET;  
THENCE SOUTH 33° 24' 22" WEST, A DISTANCE OF 1,373.51 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7;  
THENCE NORTH 00° 12' 41" WEST ALONG SAID WEST LINE, A DISTANCE OF 1,163.88 FEET TO THE SOUTHEAST SIXTEENTH CORNER OF SAID SECTION 7;  
THENCE NORTH 89° 58' 42" WEST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7, A DISTANCE OF 1,280.90 FEET;  
THENCE SOUTH 52° 17' 48" WEST, A DISTANCE OF 56.93 FEET TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7;  
THENCE SOUTH 00° 04' 21" WEST ALONG SAID EAST LINE, A DISTANCE OF 1,295.61 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 7, MARKED BY AN 8" X 8" X 8" STONE SCRIBED ¼;  
THENCE NORTH 88° 47' 44" WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, A DISTANCE OF 1,346.14 FEET TO THE WEST SIXTEENTH CORNER BETWEEN SAID SECTION 7 AND SECTION 18, BEING MARKED BY A 2 ½ INCH ALUMINUM CAP MARKED LS 31544;  
THENCE NORTH 01° 35' 40" EAST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, A DISTANCE OF 322 FEET, MORE OR LESS, TO THE CENTER OF COTTONWOOD CREEK;





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THENCE SOUTHWESTERLY ALONG THE CENTER OF COTTONWOOD CREEK, A  
DISTANCE OF 943 FEET, MORE OR LESS, TO A POINT FROM WHENCE SAID WEST  
SIXTEENTH CORNER BETWEEN SECTION 7 AND SECTION 18 BEARS SOUTH 85° 10'  
12" EAST, A DISTANCE OF 785 FEET, MORE OR LESS;  
THENCE NORTH 35° 39' 15" EAST, A DISTANCE OF 3,128.52 FEET TO A POINT OF  
THE SOUTH RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD 350;  
THENCE NORTH 89° 35' 29" EAST ALONG SAID SOUTH RIGHT-OF-WAY, A  
DISTANCE OF 307.58 FEET;  
THENCE NORTH 05° 55' 59" EAST, A DISTANCE OF 32.25 FEET TO THE POINT OF  
BEGINNING.



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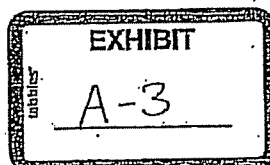
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Chaffee County Clerk

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LEGAL DESCRIPTION  
SERIAL ANNEXATION 3

ALL THAT TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 79 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 7, BEING MARKED BY A 2 1/2 INCH ALUMINUM CAP STAMPED LS 37937, FROM WHENCE THE WEST SIXTEENTH CORNER BETWEEN SAID SECTION 7 AND SECTION 18 BEARS SOUTH 88° 46' 56" EAST;  
THENCE NORTH 88° 42' 38" WEST, A DISTANCE OF 166.22 FEET;  
THENCE NORTH 60° 54' 39" WEST, A DISTANCE OF 273.89 FEET;  
THENCE NORTH 83° 09' 37" WEST, A DISTANCE OF 156.72 FEET;  
THENCE NORTH 42° 57' 23" WEST, A DISTANCE OF 463.64 FEET;  
THENCE NORTH 73° 02' 15" WEST, A DISTANCE OF 547.20 FEET;  
THENCE NORTH 02° 01' 50" WEST, A DISTANCE OF 429.84 FEET;  
THENCE NORTH 02° 05' 44" WEST, A DISTANCE OF 34.55 FEET;  
THENCE NORTH 05° 20' 10" EAST, A DISTANCE OF 1,007.59 FEET;  
THENCE SOUTH 88° 43' 28" EAST, A DISTANCE OF 413.85 FEET;  
THENCE SOUTH 00° 39' 00" EAST, A DISTANCE OF 161.92 FEET;  
THENCE SOUTH 06° 06' 30" WEST, A DISTANCE OF 607.90 FEET;  
THENCE NORTH 81° 49' 36" EAST, A DISTANCE OF 379.34 FEET;  
THENCE NORTH 83° 08' 18" EAST, A DISTANCE OF 59.91 FEET;  
THENCE SOUTH 06° 55' 42" EAST, A DISTANCE OF 450.87 FEET;  
THENCE SOUTH 50° 29' 02" EAST, A DISTANCE OF 308.20 FEET;  
THENCE SOUTH 89° 34' 34" EAST, A DISTANCE OF 67.19 FEET;  
THENCE SOUTH 89° 36' 46" EAST, A DISTANCE OF 486.67 FEET;  
THENCE SOUTH 89° 36' 33" EAST, A DISTANCE OF 380.23 FEET;  
THENCE SOUTH 89° 41' 45" EAST, A DISTANCE OF 49.99 FEET;  
THENCE NORTH 00° 23' 39" EAST, A DISTANCE OF 670.05 FEET;  
THENCE NORTH 36° 06' 29" WEST, A DISTANCE OF 144.33 FEET;  
THENCE NORTH 49° 13' 20" EAST, A DISTANCE OF 242.48 FEET;  
THENCE SOUTH 88° 01' 33" EAST, A DISTANCE OF 469.92 FEET;  
THENCE NORTH 00° 22' 57" EAST, A DISTANCE OF 871.49 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD 350;  
THENCE SOUTH 88° 10' 49" EAST ALONG SAID SOUTH RIGHT-OF-WAY, A DISTANCE OF 26.39 FEET;  
THENCE NORTH 88° 34' 02" EAST, A DISTANCE OF 262.36 FEET;  
THENCE NORTH 88° 52' 58" EAST, A DISTANCE OF 812.47 FEET, THIS AND THE PRECEDING 2 COURSES BEING ALONG SAID SOUTH RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD 350;







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THENCE SOUTH 35° 39' 15" WEST, A DISTANCE OF 3,129 FEET, MORE OR LESS, TO  
THE CENTER OF COTTONWOOD CREEK, FROM WHENCE SAID SOUTHWEST  
CORNER OF SECTION 7 BEARS SOUTH 86° 27' 34" WEST, A DISTANCE OF 595.97  
FEET;

THENCE SOUTH 20° 36' 05" EAST, A DISTANCE OF 53 FEET, MORE OR LESS, TO THE  
SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 7;

THENCE NORTH 88° 46' 56" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 613.71  
FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**  
**TEMPORARY TRAIL EASEMENT**

**THE MEADOWS AT BUENA VISTA, INC.**, a Colorado corporation, and Lonesome Pine Holdings, LLC, a Colorado limited liability company, collectively as Grantor, whose address is PO Box 5266, Buena Vista, County of Chaffee, State of Colorado, for the consideration of Ten and NO/100 Dollars (\$10.00), in hand paid, hereby grants to Chaffee County, whose address is \_\_\_\_\_, Salida, CO 81201, a temporary easement for trail purposes over and across the real property hereafter described subject to the terms contained herein. The real property in the County of Chaffee and State of Colorado covered by this permanent easement is, to wit:

A strip of land ten feet (10') wide located on Exhibit A attached, south of the south side of a line adjacent to the south side of each utility pole located immediately south of County Road 350.

**GRANTEE AGREES**, by accepting this Easement and thereafter taking action to use the Easement, that it will use the Easement for trail purposes with such use being subject to the following agreements and restrictions which shall run with the land.

1. The improved portion of the Trail Space shall never exceed eight (8) feet in width which is deemed sufficient to permit two persons to walk abreast along the trail.
2. The trails will initially be improved with aggregate appropriately compacted with the proper foundation according to good trail building practices in a fashion no less engineered than with respect to the trail constructed by the Town of Buena Vista on its property west of the golf course along Cottonwood Creek. The trails shall never be improved with concrete without the consent of the Grantor or its successor. The trails may be improved with asphalt if it is determined over time that a compaction trail is insufficient and if persons qualified as experts with respect to trail construction recommend the same as a solution to any identified problems.

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3. The Grantee shall maintain the trails in order that the trails meet at all times the standard of a well-maintained trail free of potholes, weed growth, major cracks and litter and are safe for pedestrian use.

4. The Grantee agrees at its expense to relocate a suitable barbed wire fence along the south boundary of the trail easement. Used barbed wire and old posts can be used. If the old fence is not used, the Grantee shall dispose of the same.

5. The Grantor reserves the unconditional right to revoke, vacate and void this Temporary Easement by mailing a Revocation Notice to the County and recording the same in the Chaffee County records, provided Grantor agrees not to revoke the same for at least two years following the County's completion of the trail surfaces along the Easement.

**SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

LONESOME PINE HOLDINGS, LLC,  
a Colorado limited liability company

By \_\_\_\_\_  
Manager

THE MEADOWS AT BUENA VISTA, INC.,  
a Colorado corporation

By \_\_\_\_\_  
President

STATE OF COLORADO     )  
                                      ) ss.  
County of Chaffee         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, as manager of Lonesome Pine Holdings, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

Notary Public

STATE OF COLORADO                    )  
  ) ss.  
County of Chaffee                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, as president of The Meadows at Buena Vista, Inc., a Colorado corporation.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

Notary Public